

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WOLVERINE PROCTOR & SCHWARTZ)
INC., and GREAT AMERICAN)
ALLIANCE INSURANCE CO., INC.)
Plaintiffs)

Civil Action No. 04-12189RWZ

v.)

XYZ TAPE CORP., f/k/a PATCO CORP.,)
WILLIAM B. WILBUR, and)
TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA,)
Defendants.)

**MOTION BY DEFENDANT TRAVELERS PROPERTY CASUALTY COMPANY FOR
PARTIAL SUMMARY JUDGMENT AS TO COUNT II OF THE COMPLAINT**

Pursuant to Fed.R.Civ.P. 56 and Local Rule 7.1, defendant, Travelers Property Casualty Company of America (“Travelers”), moves this Court for summary judgment on Count II of the plaintiffs’ Complaint (the only count asserted against Travelers), which appears to seek a declaratory judgment of insurance coverage as to Travelers. For the reasons set forth in the accompanying memorandum of law, the plaintiffs have no standing to assert a claim directly against Travelers. To the extent that Count II seeks to recover against Travelers for alleged violations of Mass. G.L. c. 176D and c. 93A, those statutes do not create a private cause of action for the plaintiffs and the plaintiffs have no standing to assert said claims against Travelers.

WHEREFORE, for all of the foregoing reasons and for the reasons set forth in the accompanying memorandum of law and at oral argument, the defendant Travelers Property Casualty Company of America respectfully requests that the Court enter summary judgment in its favor on Count II.

Respectfully submitted,
Travelers Property Casualty
Company of America

/s/ Joseph S. Berman
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CERTIFICATE OF SERVICE

I, Joseph S. Berman, hereby certify that on this 23rd day of September, 2005, I filed a copy of the foregoing by electronic means with the United States District Court for the District of Massachusetts using the CM/ECF system, which will send notification to the following: Matthew J. Walko, Esq., Smith & Duggan LLP, Two Center Plaza, Suite 620, Boston, MA 02108; and Lee MacPhee, Esq., Morrison Mahoney LLP, 250 Summer Street, Boston, MA 02210 and that the document has been served on all counsel of record in compliance with the Federal Rules of Civil Procedure.

/s/ Joseph S. Berman
Joseph S. Berman
